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3731

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	DANIEL ET AL.	Examiner:	NGUYEN, V.
Serial No.:	09/735,332	Group Art Unit:	3731
Filed:	DECEMBER 12, 2000	Docket No.:	1001.1351106
Title:	DISTAL PROTECTION DEVICE AND METHOD		

**TRANSMITTAL SHEET**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

**CERTIFICATE UNDER 37 C.F.R. 1.10:** The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, "Express Mail Post Office to Addressee" having an Express Mail mailing label number of: EL921286759US, in an envelope addressed to: BOX AF, Assistant Commissioner for Patents, Washington, D.C., 20231 on this 17 day of January, 2003.

By

JoAnn Lindman

We are transmitting herewith the attached:

- ☒ [X] Response.
- ☒ [X] Postcard receipt.
- ☒ [X] Please charge any deficiencies or credit any overpayment in the enclosed fees to Deposit Account No. 50-0413.

By:

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TECHNOLOGY CENTER R3700

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S/N 09/735,332

PATENT

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Serial No.:	09/735,332	Group Art Unit:	3731
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RESPONSE

**CERTIFICATE UNDER 37 C.F.R. 1.10:** The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, "Express Mail Post Office to Addressee" having an Express Mail mailing label number of: EL921286759US; in an envelope addressed to: BOX AF, Assistant Commissioner for Patents, Washington, D.C., 20231 on this 17 day of January, 2003.

By

*JoAnn Lindman*  
JoAnn Lindman

BOX AF  
Assistant Commissioner for Patents  
Washington D.C., 20231

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Dear Sir:

The following comments are presented in response to the Office Action mailed November 19, 2002. Favorable reconsideration is respectfully requested.

Applicants respectfully traverse the Examiner's rejection of claims 31-36 under 35 USC §102 (b) as anticipated by Maahs, U.S. Patent No. 5,846,260. Maahs issued December 8, 1998 and thus is not available as prior art against the instant invention. In particular, the instant application is a continuation of 09/409,497 (U.S. Patent No. 6,245,089) which is itself a continuation of 08/943,358 (U.S. Patent No. 6,001,118), which is itself a continuation of 08/810,825 (U.S. Patent No. 5,814,064), which was filed March 6, 1997.

Applicants assert that U.S. Patent No. 5,814,064 provides enabling support for the claimed emboli capturing system that includes an elongate member and a flexible emboli capturing device that is mounted proximate the distal end of the elongate member and that forms

a distally disposed emboli collection portion that has a proximally opening mouth. A frame is disposed on the mouth of the flexible emboli capturing device and is connected to the elongate member. Each of these features is believed to be found in the disclosure of U.S. Patent No. 5,814,064.

Because U.S. Patent No. 5,814,064, filed March 6, 1997, provides support for the presently claimed invention, the presently claimed invention is, at a minimum, entitled to a priority date of March 6, 1997. This predates the filing date of Maahs and thus Maahs is unavailable as prior art. Thus, the rejection is improper and should be withdrawn.

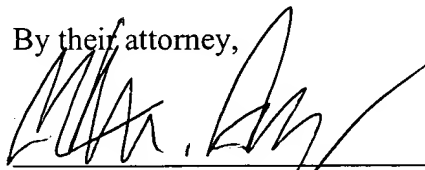
Moreover, Applicants respectfully assert that the finality of the pending Office Action be withdrawn. Since Maahs is unavailable as prior art, no pending rejection remains. Unless the Examiner is willing to proceed to allowance, the Examiner will be required to provide a new basis for rejection not necessitated by Applicants' amendment or argument.

Favorable reconsideration in the form of a Notice of Allowance is respectfully requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

JOHN M. K. DANIEL ET AL.

By their attorney,



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Dated: Jan. 17, 2003